

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,)
)
)
v.) 2:24-CR-87
)
)
KENNETH GAINES,)
)
)
Defendant.)

OMNIBUS MEMORANDUM ORDER ON PRETRIAL MOTIONS

Before the Court are pretrial motions filed by Defendant. ECF 26; ECF 28; ECF 30; ECF 32. The Court issues this omnibus order resolving the motions specified below.

Defendant asks for production of all exculpatory evidence under *Brady* and its progeny, Jencks Act materials, and Rule 404(b) material, as well as preservation of the rough notes of all law enforcement officers in this case. Consistent with Third Circuit precedent and prior orders from this Court,¹ the Court **GRANTS** the motions in part, as follows:

- ***Brady* and *Giglio* material.** Consistent with Third Circuit precedent, *Brady* material must be disclosed upon discovery, while impeachment material (including *Giglio* material) must be disclosed no later than two weeks before trial, which is sufficient time for Defendant to use that material effectively. *United States v. Higgs*, 713 F.2d 39, 44 (3d Cir. 1983) (“right to a fair trial will be fully protected if disclosure [of impeachment material] is made the day that the witness testifies”); *United States v. Fenstermaker*, No. 21-41, 2023 WL 4950499, at *2 (W.D. Pa. Aug. 3, 2023)

¹ E.g., *United States v. DiPippa*, No. 23-146, 2024 WL 1431385 (W.D. Pa. Apr. 3, 2024) (Ranjan, J.); *United States v. Addison*, No. 2:23-CR-118, 2024 WL 4278289 (W.D. Pa. Sept. 24, 2024) (Ranjan, J.).

(Cercone, J.) (“[A]ctual exculpatory evidence” should be disclosed “without undue delay[,]” but impeachment material must be disclosed “in time for its effective use at trial.”).

- **Jencks Act material.** The Court has no independent authority to order early disclosure of Jencks Act materials. *United States v. Moore*, No. 23-40, 2024 WL 2785075, at *3 n.2 (W.D. Pa. May 30, 2024) (Cercone, J.) (“[C]ourts lack the authority to order the early disclosure of Jencks material[.]”). However, the U.S. Attorney’s Office in this District has taken the position that it will agree to early production of Jencks Act material, consistent with the Court’s pretrial order. *United States v. Ramirez-Cervantes*, No. 22-226, 2023 WL 8595928, at *3 (W.D. Pa. Dec. 12, 2023) (Horan, J.) (“A court can encourage the government to provide the defense with Jencks Act materials in time to avoid unnecessary delays during trial,” or the government can agree to early disclosure). Therefore, absent any objection filed by the government to this order, Jencks Act material shall, consistent with the Court’s separate pretrial order, be produced no later than two weeks before trial.
- **Rule 404(b) material.** The Court orders that Rule 404(b) material be disclosed at least two weeks before trial. *United States v. Addison*, No. 2:23-CR-118, 2024 WL 4278289, at *10 (W.D. Pa. Sept. 24, 2024) (Ranjan, J.) (“Disclosure of [Rule 404(b)] materials two weeks before trial generally amounts to reasonable notice of the government’s intent to use this kind of evidence.”).
- **Rough notes.** The Court hereby orders that the government preserve the rough notes of the federal law-enforcement officers involved in this case. However, for any local law-enforcement officers over which the federal government has no control, the Court only orders that the government

request that all local law-enforcement officers who participated in the investigation of this case retain and preserve their rough notes.

The parties may agree to disclose any of the foregoing materials at an earlier time than those set by these deadlines.

DATE: October 7, 2024

BY THE COURT:

/s/ J. Nicholas Ranjan
United States District Judge